IN THE HIGH COURT OF JUDICATURE FOR

RAJASTHAN AT JODHPUR

::::

O R D E R

(1) S.B. CIVIL WRIT PETITION NO.2947/1999
(The Central Co.op. Bank Ltd. vs. State of Rajasthan & Ors.)

(2) S.B. CIVIL WRIT PETITION NO.3053/1999
(Chari Sang, Unit, Bikaner vs. State of Rajasthan & Ors.)

(3) S.B. CIVIL WRIT PETITION NO.3049/1999
(Raj. State Co.op. Loan Sup. Union, Bikaner vs. State of Rajasthan & Ors.)

WRIT PETITION UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA.

DATE OF ORDER :: 18th October, 2006

PRESENT

REPORTABLE

HON'BLE SHRI JUSTICE MOHAMMAD RAFIQ

Mr.Vijay Bishnoi]
Mr.Rajesh Joshi] Advocates for the petitioners.
Mr.M.R. Singhvi]

Mr.J.L. Purohit]
Mr.P.S. Bhati] Advocates for the respondents.

BY THE COURT

Under challenge in these three writ petitions is the common order dated 24th July, 1999 passed by the Additional Registrar (Appeals), Co-operative Societies, Jodhpur. While the first writ petition No.2947/1999 has been filed by the Central Co-operative Bank Limited, Bikaner and other two writ petitions No.3053/1999 and 3049/1999 have been filed respectively by Rajasthan Sahakari Bank Karmchari Sangh-Unit, Bikaner and Rajasthan State Co-operative Loan Supervisors Union, Bikaner. All the three petitions were therefore taken up together for hearing and are being decided by this common judgment. For the purpose of convenience however all these petitions are being decided on the basis of facts of the first writ petition namely S.B. Civil Writ Petition No.2947/1999.

The order impugned in these writ petitions was passed by the Additional Registrar (Appeals), Co-operative Societies, Jodhpur (respondent No.2 herein) thereby accepting the revision petition filed by respondent No.3 Shri Bhanwar Singh. Respondent No.3 Bhanwar Singh was appointed as Junior

Accountant in the petitioner-Bank under the Antyoday Yojna (in short the 'Yojna') vide order dated 02nd February, 1980. The said scheme came to an end on 31st March, 1982. The State Government came out with a proposal for absorption of all those working in closed down Scheme. The Registrar, Co-operative Societies issued an order on 11th March, 1983 in this regard providing that all those persons who were recruited as Junior Accountants, L.D.Cs., Drivers and Class-IV employees in the said Yojna would be absorbed in the Bank cadre provided they fulfill the minimum qualification prescribed for regular appointment and those who do not fulfill the minimum qualification, may be allowed to continue in the service of the Bank in the present pay scale and the allowances drawn by them. The Government thereafter issued another order on 16th April, 1985 which provided that the Junior Accountants shall be absorbed in the Bank on the post of Clerk and they shall be assigned seniority immediately below existing Clerks. The minimum qualification for absorption on the post of Junior Accountant and Clerk-cum-Cashier would be graduation. Pursuant to the order dated 16th April, 1985, the petitioner-

Bank vide its letter dated 25th June, 1985 asked the respondent No.3 to give his option for absorption. When he did not give the requisite option, a letter was again issued to him on 19th July, 1985 informing that in case he failed to submit the option, he would be relieved from service. In the meantime, State Government also issued an order dated 08th August, 1985 directing that if those appointed under the Yojna do not give option pursuant to the order dated 16th April, 1985, their services may be terminated. Although the respondent No.3 did not give option, but at the same time the fact remains that his services were not terminated either. The Managing Director of the Bank vide his letter dated 09th January, 1986 requested the State Government to allow them to absorb the petitioner on the post of 'D' Grade Officer but that was not agreed to by the Government.

The petitioner-Bank finally gave one last opportunity to the respondent No.3 by their letter dated 27th October, 1986 requesting him to submit his option positively up to 30th October, 1986 or else it would be presumed that he was not

willing to get absorbed in the services of the Bank and he would be deemed to have been removed from service. At this stage, the respondent No.3 filed a civil suit in the Court of Munsif-cum-Judicial Magistrate (First Class), Bikaner against the said order in which a temporary injunction order was passed in his favour on 30th October, 1986. The Board of Directors of the petitioner-Bank thereafter passed a resolution on 13th May, 1988 for absorption of the respondent No.3 on the post of Assistant Executive Officer and the Registrar, Co-operative Societies, Rajasthan was requested to accord permission for such a absorption. It was at this stage that the petitioner filed a writ petition before this Court praying for a mandamus for his absorption on the post of Assistant Executive Officer. The Registrar however refused to give his approval to the aforesaid proposal. The Joint Registrar, Co-operative Societies, Bikaner in exercise of his powers under Section 32 of the Rajasthan Co-operatives Act, 1965 (in short the Act of 1965) cancelled the aforesaid resolution of the Bank dated 13th May, 1988. The petitioner-Bank by its order dated 06th December, 1991 thereafter posted the respondent No.3 as a

clerk. While the respondent No.3 withdraw the aforesaid writ petition, but he filed another writ petition but this time challenging the order dated 06th December, 1991 and again seeking a mandamus for his absorption on the post of Assistant Executive Officer and for quashment of the orders dated 16th April, 1985, 08th August, 1985 and 31st December, 1985 referred to above. The said writ petition came to be decided by this Court on 05th August, 1992 whereby the order dated 31st December, 1990 passed by Joint Registrar, Co-operative Societies, Bikaner was quashed on the ground that prior to passing of the said order opportunity of hearing was not provided to respondent No.3. It was therefore directed that the Registrar Co-operative Societies should decide the matter regarding employees who were appointed under Yojna on a uniform basis within a period of six months and till then the respondent No.3 was allowed to continue on the same post. The Court however observed that this would not oblige the Registrar to reopen absorptions which have been finalized and against which no grievance has been made.

The Registrar by his order dated 18th June, 1996 decided the matter as per the directions contained in aforesaid judgment of this Court. In this order, it was directed that the cases of the Junior Accountants who submitted their option as per order dated 16th April, 1985 and were finally absorbed in the Bank shall not be reconsidered and the Junior Accountants, who have not been absorbed till date or are working under protest on the post of 'D' Grade Officer shall be absorbed on the same post. The Junior Accountants who do not possess the requisite qualification for appointment on 'D' Grade Officer would be absorbed on the post of L.D.C. They would however be absorbed on the post of 'D' Grade Officer at a later point of time when they acquire the requisite qualification. Pursuant to the order dated 18th June, 1996 the petitioner-Bank considered the case of the petitioner for absorption. The then Administrator of the petitioner-Bank sent the matter to the Registrar, Co-operative Societies, Jaipur. The Registrar by his order dated 24th April, 1997 directed that the respondent No.3 be absorbed in accordance with the direction No.2 of the order dated 18th June, 1996. The Managing Director of the petitioner-

Bank accordingly issued an order on 31st July, 1997 absorbing the respondent No.3 on the post of Clerk-cum-Cashier because he did not possess the requisite qualification for appointment on 'D' Grade Officer. The respondent No.3 then served a legal notice for demand of justice upon the petitioner-Bank through his advocate on 13th January, 1998 requesting for withdrawal of the order dated 31st July, 1997. The petitioner-Bank sent a reply to the said legal notice on 27th January, 1998. Almost a year thereafter the respondent No.3 preferred a revision petition against the said order under Section 128 of the Act of 1965. The Additional Registrar (Appeals), Co-operative Societies, Jodhpur by order dated 18th July, 1998 stayed the operation of the order dated 31st July, 1997 which was passed a year ago. The petitioner-Bank raised the objection as to the maintainability of the revision petition on the ground of its being time barred. The Additional Registrar (Appeals) however by order dated 24th August, 1999 allowed the revision petition and quashed the order dated 31st July, 1997. It is against this order that the present writ petitions have been filed.

The writ petition has been contested by the respondent No.3 who in his reply has raised preliminary objections. It has been submitted that the order passed by the Additional Registrar (Appeals) Co-operative Society, Jodhpur is appealable before the Registrar Co-operative Society Rajasthan, Jaiupr and the petition be therefore dismissed. It was further stated that as per by-laws of the petitioner-Bank, orders of the Court could be challenged only when the Board of Directors take an appropriate decision in its meeting. No such decision was ever taken by the Board. The writ petition is therefore liable to be dismissed. On merits of the case, it has been stated that the Registrar by his order dated 12th April, 1983 directed all the Co-operative Societies to absorb the employees as per the decisions of the Board of Directors. Reference has been made to the order dated 26th August, 1983 whereby respondent No.3 was posted as Junior Accountant in the office of petitioner-Bank. It has been denied that the respondent No.3 did not submit his option. According to respondent No.3, he duly submitted his option as would be evident from the impugned order dated 31st July, 1997. It has been contended that as per

the directions of the Registrar dated 12th April, 1983, the petitioner has been rightly absorbed on the post of Assistant Executive Engineer. The Managing Director of the petitioner-Bank by his letter dated 01st December, 1984 specifically observed that respondent No.3 has been absorbed in the service of the petitioner-Bank from 22nd August, 1983. The order to the contrary passed by Joint Registrar on 31st December, 1990 upon being challenged before this Court was finally quashed and set aside on the ground that no hearing was provided to the respondent No.3 but with a direction that the said judgment would not oblige the Registrar to reopen the matters where absorptions have been finalized and no grievance has been raised their against. The Registrar could not thereupon reopen the matter by directing absorption of respondent No.3 on an inferior post of Clerk. The Managing Director of the Bank in passing the order dated 31st July, 1997 has reopened the absorption of respondent No.3 made by the Board of Directors whereas the very same Managing Director by passing another order dated 29th July, 1997 granted revised pay scale of 'D' Grade Officer to the petitioner. It was therefore

that the respondent No.3 filed revision petition under Section 128 of the Act of 1965. The Joint Registrar (Appeals) in exercise of his revisional powers rightly allowed the revision petition and quashed the order dated 31st July, 1997 and other orders passed in consequence thereof. It has therefore prayed that the writ petition be dismissed.

During the pendency of the writ petitions, the operation of the impugned order dated 24th July, 1999 was stayed with the result that the order dated 31st July, 1997 continued to remain in force. An affidavit on behalf of the petitioner has been filed in the present writ petition in which it has been stated that the respondent No.3 was working as Clerk-cum-Cashier at Bikaner. He was by order dated 06th April, 1999 required to join at Khajuwala Branch of the Bank but he did not join his duties at Khajuwala Branch. A reminder dated 14th April, 1999 was sent him to join. He however failed to comply the order. A charge-sheet was issued on 07th May, 1999 to him for willful absence from duty and disobedience of the order and he was placed under suspension. Finally in the disciplinary

proceedings, Inquiry Officer found the charge of willful absence proved against him. The disciplinary authority by an order dated 23rd December, 2004 awarded penalty of stoppage of three grades increments with cumulative effect to him. A separate charge-sheet under Rule 16 of the CCA, Rules dated 24th May, 1999 was also served upon the petitioner for charge of misbehaviour with senior officers and also for willful absence. This was later converted under Rule 17 of the CCA Rules. There was a third charge-sheet also against the respondent No.3 under Rule 16 of the CCA Rules for making forged signatures in the attendance register and misbehavior with the officers and willful absence from the duty. In this chargesheet also the inquiry officer found the charges proved against the respondent No.3 however, no final order has yet been passed. In spite of the fresh posting order dated 24th June, 2004 however respondent No.3 did not join duties as Assistant in the Flying Squad No.1 and has illegally by application dated 16th March, 2006 and 22nd March, 2006 submitted his joining report on the post of Assistant Executive Officer.

The respondent No.3 has filed a second stay petition in the present writ petition on 05th July, 2006 alongwith his joining report dated 16th March, 2006 and 22nd March, 2006 and prayed that the petitioner-Bank be directed to allow him to join on the post of Assistant Executive Officer, pursuant to his joining report dated 16th March, 2006 from that date onwards. The respondent No.3 has not given any explanation whatsoever as to why he did not discharge the duties with the Bank throughout and why when after reinstatement he was posted as Assistant with the Flying Squad, he submitted his joining report enormously delayed on 16th March, 2006 on higher post of Assistant Executive Officer. Moreover, he did not file any writ petition at his own, but filed the stay petition in the writ petition filed by the Bank and therefore obviously no such prayer for interim relief at the instance of the respondent No.3 could be entertained in the writ petition filed by the Bank. When the matter was listed in the second stay petition, the arguments for final disposal in all the three petitions were heard and that is how they are being disposed of by this

judgment.

I have heard Mr. Vijay Bishnoi, Mr.Rajesh Joshi and Mr.M.R. Singhvi, learned counsel for the petitioners as well as Mr.J.L. Purohit and Mr.P.S. Bhati, learned counsel for the respondents and perused the records.

Learned counsel for the petitioners are argued that the respondent No.3 cannot be absorbed on the post of Assistant Executive Officer because he was not qualified for appointment on that post and therefore the Joint Registrar in exercise of his powers under Section 32 of the Act of 1965 had rightly rescinded the resolution of the Board of Directors of the Bank. When the respondent No.3 challenged the said order, this Court by its judgment dated 05th August, 1992 simply directed the Registrar, Co-operative Societies to take a uniform policy decision for the entire State of Rajasthan in regard to absorption of all those who were rendered surplus from Yojna and pass a fresh order after providing an opportunity of hearing to the respondent No.3 and other affected persons. The order dated 31st July, 1997 passed by the Managing

Director was only a consequential order. The Joint Registrar therefore committed serious error of law in setting aside the order dated 31st July, 1997 which virtually amounted to overturning the order of the Registrar. It has been argued that ever since the order of Joint Registrar was stayed by this Court, the petitioner has been absenting from his duties and number of charge-sheets have been issued to him and finally when after revocation of his suspension, he was given fresh posting by order dated 24th December, 2004, the petitioner did not join for a quite long time and now at a very belated stage he gave joining report on 16th March, 2006 on the post of Assistant Executive Officer. Again at a belated stage on 05th July, 2006 he has filed a second stay petition in the present writ petition. It is therefore prayed that the order dated 24th July, 1999 be quashed and set aside and the writ petitions be allowed.

Mr. P.S. Bhati, learned counsel for respondent No.3 argued that his client stood absorbed on the post of Assistant Executive Officer vide resolution of the Board of Management dated 13th May, 1988. He was qualified for appointment on the

post of Assistant Executive Officer. He has in this connection relied upon the schedule to the Rules indicating qualifications for recruitment/promotion of various posts which is Annexure-22, according to which the eligibility qualification for direct recruitment on the post of 'D' Grade Officer was at least graduate having three years experience of clerical post. He further argued that under Sub-rule 24 of Rule 12 of the bye-laws of the Bank which have been prepared under Section 8 of the Act of 1965, complete powers of appointment, promotion etc., on the post of 'D' Grade Officer vested with the Board of Directors and therefore the Managing Director was bound by the resolution of Board of Directors and could not have passed an order contrary thereto. He also argued that the union could not raise grievance with regard to absorption of respondent No.3 because if his appointment is taken to be a direct recruitment, it would not affect anyone.

I have given my thoughtful consideration to the rival arguments advanced by the learned counsels and perused the record.

I am not persuaded to uphold the argument of Mr.P.S. Bhati, learned counsel for the respondent No.3 that the issue with regard to his absorption stood finalized with the resolution passed by the Board of Directors. It was this resolution which had been rescinded by the Joint Registrar in exercise of powers conferred upon him under Section 32 of the Act of 1965 which eventually formed subject matter of challenge in the writ petition filed by respondent No.3 himself. The order of Joint Registrar dated 31st December, 1990 was set aside by this Court while allowing the said writ petition on the ground of violation of principles of natural justice. It would be appropriate to extract the relevant part of the said judgment dated 05th August, 1999 which is as under:-

> "9. Here I may pause to point out that question of absorption of the employees recruited under the Antyoday Project may have wide repercussions because similar recruitments under the Antyoday Scheme had been made in the various districts of Rajasthan. The question absorption of such employees would require that a conscious policy decision is taken by the Registrar, Cooperative Societies, Rajasthan Jaipur after hearing all concerned, namely after hearing the effected employees like the petitioner and their respective employer banks. Since, this

exercise cannot be done by the Joint Registrar, Cooperative Societies, Bikaner alone, therefore, it would be in the fitness of things that Registrar, Cooperative Societies Rajasthan Jaipur may himself hear all the concerned parties and then take a conscious decision regrading absorption of the employees recruited under the Antyoday Scheme, in the Cooperative Banks of the State.

10. In doing so, he shall have to keep in mind, the minimum qualifications prescribed for the regular staff of cooperative bank, the pay scale in which an employee had been recruited and protection thereof and such other ancillary matters. Before undertaking this exercise, the Registrar, Cooperative Societies, Rajasthan Jaipur would do well to ascertain from all the concerned banks, the position of absorption of the employees pertaining to Antyoday Project. If in any bank absorption have not been finalized or where employees are aggrieved against their absorption and their representations are pending, then he should hear all concerned and evolve a uniform pattern of absorption so that all similarly situated persons get similar treatment. He may do this exercise within a period of six months from today. In the meanwhile, the petitioner may be allowed to continue on the post he has been holding so far, as he may also be paid his salary after proper fixation in the revised pay scale so that he does not suffer any monetary loss. This also may be done within a period of six months from today. Respondent bank may pay the arrears if any due to the petitioner as a consequence of such re-fixations in accordance with the revised pay scale

> applicable from time to time. In case, Registrar, Cooperative Societies, Rajasthan Jaipur passes any order adverse to the petitioner, it shall be open to the petitioner to challenge that order by taking appropriates steps and all such grounds as may be available to him under law and the grounds which were taken in this writ petition may be taken by him in such proceedings. I may make it clear that this would not oblige the Registrar to re-open matters where absorptions have been finalized and no grievance has been made against such absorptions. The writ petition is disposed of accordingly."

This would now become clear from the aforesaid extracted portion of the judgment that this Court was conscious of the fact that the question of absorption of employees who were originally recruited under the Antyoday Yojna would have statewide repercussions because such recruitment in the said Yojna was made throughout the State and therefore their absorption would require a conscious policy decision by the Registrar, Co-operative Societies Rajasthan, after providing an opportunity of hearing to all affected employees like the petitioner. The Court was satisfied that this could not be done by Joint Registrar, Co-operative Societies,

Bikaner alone and therefore it was observed that Registrar would himself hear all concerned and take a uniform decision within six months so that all similarly situated persons get similar treatment. It was further observed that in the meantime, the petitioner (respondent No.3 herein) may be allowed to continue on the post which he has been holding so far and in case the Registrar pass any order adverse to him, it shall be open to him to challenge that order again. While concluding the judgment, this Court made it clear that the said judgment would not oblige the Registrar to reopen the matters where absorptions have been finalized and no grievance had been made their against. The aforesaid judgment of this Court has been simply misconstrued and misunderstood by the Joint Registrar (Appeals) Co-operative Societies, Jodhpur while passing the impugned order dated 24th July, 1999 and which I shall presently discuss and explain how he did.

In compliance of the aforesaid judgment passed by this Court, the Registrar, Co-operative Societies, Rajasthan passed an order on 18th June, 1996 wherein after hearing all the

concerned including respondent No.3, he observed that according to Rule governing the service conditions of 'D' Grade Officers (Branch Manager & Assistant Executive Officer) eligibility qualification for direct recruitment is graduation with II Class whereas for the post of Clerk, it is simple graduation. While serving the government those appointed as Junior Accountant in the Antyoday Yojan were required to possess only such qualification which was prescribed for the said post in government service. Qualification for the appointment on the post of Junior Accountant in the Government was simple graduation and therefore they were kept at par therewith. Upon closer/discontinuation of Antyoday Yojna, they were required to be absorbed in the services of the Bank. No post like Junior Accountant was available with the Banks and therefore only available post on which they could be accommodated was that of the Clerk. The Registrar thereafter noted that since the minimum qualification for appointment on the post of 'D' Grade Officer was graduation with II Class whereas such qualification for Junior Accountant was simple graduation, only some of Junior Accountants who were having

the qualification with II Class could be absorbed on the post of 'D' Grade Officers.

On consideration of the case of all others in general and respondent No.3 in particular, the Registrar issued uniform policy guidelines to be followed in the matter of absorption of such Junior Accountants. It was however observed that absorption of Junior Accountants which has become made pursuant to the Government order dated 16th April, 1985 and which has become final shall not be reopened. It was further directed that Junior Accountants who have not been absorbed so far and who were working under protest, such of them who possess eligibility qualification for appointment on 'D' Grade Officers may be absorbed as such and those who do not possess such qualification may be absorbed on the post of Clerk. But if at any point of time in future, they acquire the qualification of 'D' Grade Officer, they would be absorbed on the post of 'D' Grade Officers form that date. It was further directed that if post was not available with the Bank for their absorption, proposal for creation of such post should be

separately sent to the Department.

Subsequent to the order passed by the Registrar, the Managing Director of the petitioner-Bank passed a consequential order in pursuance to policy guidelines contained in the order of the Registrar directing absorption of respondent No.3 on the post of Clerk-cum-Cashier on the premise that he did not possess the eligibility qualification of appointment on the post of 'D' Grade Officer. Curiously enough, the respondent No.3 challenged this order again before Joint Registrar (Appeals), Co-operative Societies, Jodhpur although this was nothing but an order passed in compliance of the order of the Registrar dated 18th June, 1996 which in turn was also passed in compliance of the direction issued by this Court in its judgment dated 05th August, 1992. It is quite surprising to find that the Joint Registrar in the impugned order dated 24th July, 1999 has in the garb of examining the validity of the order of Managing Director dated 31st July, 1997 virtually reversed the order of Registrar who is an authority higher/superior in hierarchy than him and that too, when he passed such order in compliance of the judgment passed by this Court.

In my considered view, the order passed by the Joint Registrar is far too perfunctory to merit approval. He has simply misconstrued and misunderstood the operative part of the aforesaid judgment of this Court. This Court in its judgment had directed that the Registrar shall provide an opportunity of hearing to the respondent No.3 and pass a fresh order and in case the order was adversed to him, it shall be open to him to challenge it again in an appropriate proceeding. While concluding, it was further observed by the Court "that such judgment would not oblige the Registrar to reopen matters where absorptions have been finalized and no grievance had been made against such absorptions." The Joint Registrar however has misconstrued this part of the order and held that when this Court had directed that in such of the cases where the issue with regard to absorption has been finalized could not reopened, the case of the respondent No.3 could not be reopened and thus it was liable to be set aside. One is really at a loss of understanding, as to what else was the object of this Court in remanding the matter to the Registrar if not to pass a fresh order in the case of the respondent No.3. In

doing so, the Registrar was required to provide an opportunity of hearing to the respondent No.3 and pass a fresh order and it was further observed that in the meantime the petitioner would be allowed to continue on the post which has been holding so far, in other words the lower post and that he shall be paid the salary after proper fixation in the revised pay scale within a period of six months so that he does not suffer any loss. Not only this, in the impugned order it was further observed that if the Registrar pass any order adverse to the respondent No.3 it shall be open to him to challenge it again.

So far as the argument of Shri Bhati with regard to qualification for appointment on the post of Assistant Executive Officer being "at least graduate having three years experience of clerical post" is concerned, this arguments merit outright rejection because the said qualification in Clause-(a) of the schedule referred to by him pertains to promotion and not for direct recruitment, whereas Clause (c) provides for the qualification for direct recruitment as Graduation with II Class with preference to be given to those having background of

Commerce/Economics. As for the argument that only Board of Directors was vested with the power of appointment/promotion etc., it may be stated that such power is always subject to statutory provisions contained in the Act of 1965 and when the Act empowers the Registrar, Co-operative Societies to rescind the resolution of the Board of Directors if it is not in conformity with law or for any other justified reason, the Board of Directors by itself cannot function as the supreme authority.

It may also be noted that the respondent No.3 was originally appointed in a Antyoday Yojna and when this scheme was disbanded and discontinued, the State Government on its own, out of benevolence for those working in such Yojna decided to absorb them in various Banks according to their qualifications. In doing so, as would be evident from the order of the Registrar, it was also directed that the appointees like the respondent No.3 in the present case absorbed on the post of Clerk-cum-Cashier, would be absorbed on the higher post from the date they acquire the qualification of such post.

Somewhat similar question was raised before the Hon'ble Supreme Court in Avas Vikas Sansthan & Anr. Vs. Avas Vikas Sansthan Engineers Assn. & Ors., reported in 2006 (4) SCC 132. That was a case in which employees of the Avas Vikas Sansthan (AVS) which was a Society registered under the Societies Registration Act, 1860 were proposed to be absorbed in various local bodies of the State on the conditions that they would not claim any benefit of the past service, would not be entitled to pay protection, would be adjusted on the lowest of the post and would not be allowed to count their past service for any purpose whatsoever.

A Division Bench of this Court allowed them all those benefits and when the appeal was taken to the Supreme Court, their Lordships in para 50 of the judgment observed as under:-

> "**50.** It is settled law that the power to abolish any civil post is inherent in every sovereign Government and such abolition will not entail any right on the person holding the abolished post the right to re-employment or to hold the same post. In the present case, the State Government was benevolent enough to float a scheme to absorb such

> employees whose posts were abolished. Therefore, in our opinion, the arguments advanced by the counsel for the respondents with regard to unfairness meted out to the employees of the Avas Vikas Sansthan hold no water."

While dealing with the argument that the action of the State Government should be informed of fairness in action in para 65 of the judgment, their Lordships further observed as under:-

> "**65**. In our opinion, the State of Rajasthan has acted fairly and benevolently though the State has no constitutional and legal obligation to offer alternative employment to the employees of AVS upon abolition of posts. Consequent to the liquidation of AVS itself, it had framed a scheme to adjust the employees in other local bodies by relaxing the rules of such bodies and the terms and conditions were fixed without financial economic compulsions of the State. The present case is one of liquidation of an organization and consequent abolition of post in the said organization. There is also no pleading that the conditions contained in the undertaking are contrary to Section 23 of the Contract Act or violative of Article 14 of the Constitution or inconsistent with the directive principles of State policy."

Those observations, in my considered view, squarely

apply to the present case too when the State Government has out of benevolence and compassion decided to absorb the employees working in the Antyoday Yojna upon its closer. If the government has out of sheer benevolence decided to provide them alternative jobs according to their qualification, such appointees cannot insist for their absorption on a higher post even though they may not be possessing the eligibility qualification to hold such post.

This Court also cannot approve of the kind of attitude shown by respondent No.3 in absenting from his duties for such a long period of time although this observation is only incidental and not a subject matter of examination in the present writ proceedings. Net conclusion of the aforesaid discussion is that the impugned order passed by the Joint Registrar suffers from error apparent on the face of record and legal infirmities and therefore the same deserves to be set aside.

In the result, the writ petitions succeed and are hereby

allowed. The impugned order passed by the Joint Registrar dated 24th July, 1999 is set aside and resultantly order of the Managing Director dated 31st July, 1997 passed in consequence to the order of the Registrar dated 18th June, 1996 would stand revived. There shall be no order as to costs.

[MOHAMMAD RAFIQ],J.

A.K.Chauhan/-